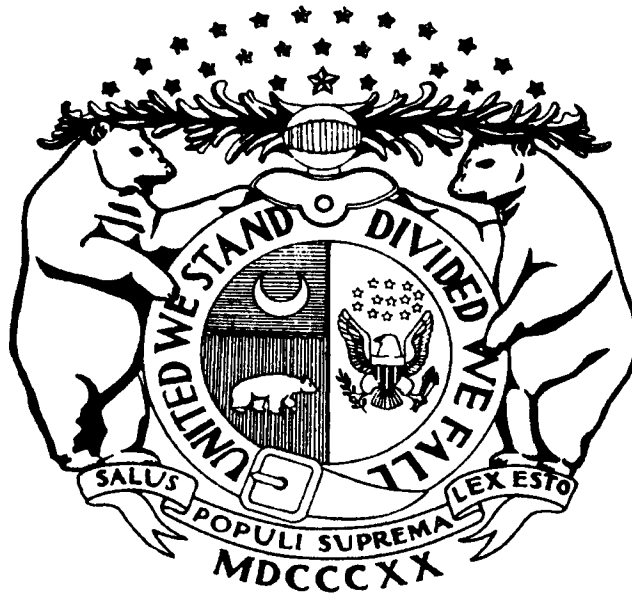


REPORT OF  
FINANCIAL EXAMINATION  
MARCIT  
AS OF  
JUNE 30, 2005



STATE OF MISSOURI  
DEPARTMENT OF INSURANCE  
JEFFERSON CITY, MISSOURI

## TABLE OF CONTENTS

<b>SCOPE OF EXAMINATION .....</b>	<b>1</b>
Period Covered .....	1
Procedures .....	2
Comments Previous Examination .....	2
<b>HISTORY.....</b>	<b>3</b>
General.....	3
Capital Stock.....	4
Dividends.....	4
Management .....	5
Conflict of Interest.....	7
Corporate Records .....	7
Acquisitions, Mergers and Major Corporate Events .....	8
Surplus Debentures.....	8
<b>AFFILIATED COMPANIES .....</b>	<b>8</b>
<b>FIDELITY BOND &amp; OTHER INSURANCE.....</b>	<b>8</b>
<b>EMPLOYEE BENEFITS .....</b>	<b>9</b>
<b>INSURANCE PRODUCTS AND RELATED PRACTICES .....</b>	<b>9</b>
Territory and Plan of Operations .....	9
Service Providers .....	11
Policy Forms and Underwriting .....	12
Advertising and Sales Material.....	13
Treatment of Policyholders .....	13

<b>REINSURANCE</b> .....	13
Assumed .....	13
Ceded .....	13
<b>ACCOUNTS AND RECORDS</b> .....	14
<b>FINANCIAL STATEMENTS</b> .....	14
Assets.....	15
Liabilities and Fund Equity .....	16
Statement of Revenues and Expenses .....	16
Fund Equity Account.....	17
<b>NOTES TO FINANCIAL STATEMENTS</b> .....	17
<b>EXAMINATION CHANGES</b> .....	17
<b>GENERAL COMMENTS AND RECOMMENDATIONS</b> .....	17
<b>SUBSEQUENT EVENTS</b> .....	18
<b>ACKNOWLEDGMENT</b> .....	19
<b>VERIFICATION</b> .....	19
<b>SUPERVISION</b> .....	19

January 31, 2006  
Kansas City, MO

Honorable W. Dale Finke, Director  
Missouri Department of Insurance  
301 West High Street, Room 530  
Jefferson City, Missouri 65101

Mr. Finke:

In accordance with your financial examination warrant, a full-scope financial examination has been made of the records, affairs and financial condition of

**MARCIT**

also referred to as the "Association". The location of the Association's administrative office is 600 Broadway, Suite 300, Kansas City, Missouri 64105, telephone number (816) 474-4240. This examination began on December 5, 2005 and concluded on the above date.

**SCOPE OF EXAMINATION**

**Period Covered**

The prior full-scope financial examination of MARCIT was conducted by an examiner from the State of Missouri as of June 30, 2002.

The current full-scope financial examination covers the period from July 1, 2002 through June 30, 2005, and was conducted by an examiners from the State of Missouri and the State of Kansas, also in the Midwestern Zone.

This examination also included the material transactions and/or events occurring subsequent to the examination date which are included in this report.

## **Procedures**

This examination was conducted using the guidelines set forth in the Financial Condition Examiners Handbook of the National Association of Insurance Commissioners (NAIC), except where practices, procedures, and applicable regulations of the Missouri Department of Insurance and statutes of the State of Missouri prevailed.

The examiners relied upon information supplied by the independent auditor, Conner Ash, PC, of St. Louis, Missouri, from its audit covering the period from July 1, 2004 through June 30, 2005. This information included, but was not limited to, attorney letters, cash and investment confirmations, and fraud-risk assessment.

## **Comments Previous Examination**

Listed below are the comments and recommendations taken from the prior examination report dated as of June 30, 2002, and the subsequent response or action taken by the Association.

### **Conflict of Interest Statements**

***Comment:*** The Association should resume requiring that conflict-of-interest statements be completed annually.

***Association Response:*** Pursuant to the recommendations by the Missouri Department of Insurance, MARCIT resumed requiring the Board of Directors to complete conflict of interest forms each year at our Annual Membership Meeting. They are on file in the MARCIT office. We also require Board of Directors and staff to complete Indemnification/Confidentiality agreements.

***Current Findings:*** The Association has started requiring all Directors complete conflict-of-interest statements annually. However, the Company has not instituted the

same practice for officers or employees. See the Conflict of Interest section of this report for recommendations.

### **Safekeeping Agreement**

***Comment:*** The Association should amend the safekeeping agreement with Country Club Bank to include indemnification, requiring the bank to replace securities lost or stolen while in the bank's custody.

***Association Response:*** Pursuant to the recommendations by the Missouri Department of Insurance, MARCIT has amended the safekeeping agreement with Country Club Bank for coverages to replace lost or stolen securities while in the bank's custody.

***Current Findings:*** The current agreement should be amended to indicate that the Director of the Missouri Department of Insurance be notified in the event the Association withdraws all funds in the account, or closes the account.

## **HISTORY**

### **General**

The Mid-America Regional Council Insurance Trust (MARCIT) and the Mid-America Regional Council Liability Insurance Trust (MARCLIT) were originally formed as self-insurance pools to cover health and dental, workers' compensation and property and casualty claims for their members.

MARCIT was originally formed under the provisions of Chapter 287 RSMo (Workers' Compensation Law) and began providing workers' compensation coverage on July 1, 1983. On July 1, 1984, MARCIT also began providing health and dental

coverage under the provisions of Chapter 355 RSMo (Not For Profit Corporation Law). MARCLIT was originally formed under the provisions of Chapter 537 RSMo (Political Subdivision Assessable) and began providing property, casualty and liability coverage on December 31, 1984.

On June 6, 1991, the membership of MARCIT and MARCLIT approved the merger of both entities with the surviving entity being Mid-America Regional Council Liability Insurance Trust. Subsequent to the merger, MARCLIT changed its name to Mid-America Regional Council Insurance Trust (MARCIT). As part of the merger, the Association began offering all lines of insurance under Chapter 537 RSMo, as allowed by a change in the language in this statute in 1988.

Effective July of 1997, Mid-America Regional Council Insurance Trust changed its official name to MARCIT.

### **Capital Stock**

MARCIT is a not-for-profit entity and has no capital stock.

### **Dividends**

RSMo 537.635 (Entity to be treated as corporation-not to produce profit-may pay dividends, when.) allows the Association to pay dividends to policyholders if the Association has a positive surplus before and after the dividend payment.

The Association has not declared or paid any dividends to policyholders during the current examination period.

## **Management**

The Association's Bylaws stipulate a Board of Directors consisting of at least five individuals be elected from the Association's members. Directors serve three year staggered terms. As of June 30, 2005 eleven individuals were elected to the Board of Directors.

The Board of Directors elected and serving at June 30, 2005 was as follows:

<u>Name</u>	<u>Occupation/Title</u>	<u>Member Affiliation</u>
David Blackburn - Chairperson	City Administrator	Riverside, MO
Carolyn Hobbs – Vice- Chairperson	Human Resource Director/ City Treasurer	Bonner Springs, KS
Kirk Davis - Secretary	City Manager	Gladstone, MO
Brian Scott - Treasurer	Assistant City Administrator	Grandview, MO
Greg Bakian	Personnel Director	Leavenworth, KS
Mark Randall	City Administrator	Pleasant Hill, MO
Dianna Wright	City Administrator	Harrisonville, MO
Phil Lammers	City Administrator	Cameron, MO
Shelley Temple-Kneuvean	Assistant City Administrator	Lee's Summit, MO
Fred Siems	City Administrator	Blue Springs, MO
Cynthia Boecker	Assistant City Administrator	Liberty, MO

The officers of the Association are:

Terry Norwood	CEO and President
Athena Wilson	Vice President

At June 30, 2005, the Association had the following committees as authorized by the Bylaws:



### Administrative Committee

This committee is comprised of the Board of Directors officers and the officers of the Association and oversees all marketing, personnel, budgeting, legal, accounting and investment activities of the Association.

### Benefit Advisory Committee (formally the Health and Dental Committee)

This committee advises the Board on underwriting and marketing issues related to the Health and Dental Pool. The Chairman of the Board of Directors appoints committee members from the general membership with the advice and consent of the Board of Directors.

### Property & Casualty Advisory Committee

This committee reviews the coverage offered to ensure that it meets the needs of the membership and complies with state and federal regulations. This committee also monitors current market conditions to determine whether coverage should be purchased or self-insured. The Chairman of the Board of Directors appoints committee members from the general membership with the advice and consent of the Board of Directors.

### Workers' Compensation Advisory Committee

This committee reviews the coverage applied for to ensure that it meets the needs of the membership and complies with state and federal regulations. This committee also monitors current market conditions to determine whether coverage should be purchased or self-insured. The Chairman of the Board of Directors appoints committee members from the general membership with the advice and consent of the Board of Directors.

### **Conflict of Interest**

Currently, MARCIT requires its directors to complete a conflict of interest statement upon election or appointment to the Board, and annually thereafter. A review of the forms for the period under examination indicated no material conflicts. It was noted that conflict of interest statements were not completed by the Association's officers or other key personnel.

It is recommended that MARCIT require all officers and employees complete conflict of interest statements annually.

### **Corporate Records**

MARCIT filed amended Articles of Association with the Missouri Secretary of State on June 7, 2002. The amended Articles reflected the Association's name change to MARCIT, increased the amount of allowable assessments and clarified participation in the distribution of assets upon dissolution. The Bylaws have not been amended since the prior examination.

MARCIT is not in compliance with several of the requirements included in its current Bylaws. The Bylaws require that Board of Director meetings be held on the first Wednesday of each February, April, June and December with an annual meeting held immediately after the annual membership meeting, however, these meetings are not occurring on the dates stipulated. The Bylaws also require the automatic termination of any Director if absent from a certain number of meetings. Over the three year period from July 1, 2002 through June 30, 2005, this would have affected three Board members, one of which still sits on the Board. It is recommended that the Association begin

following all of the provisions of its Bylaws regarding annual meetings and director participation.

The minutes of the annual membership meeting, the Board of Directors' meetings and the various Board committee meetings were reviewed for the period under examination. The minutes appeared to properly support and approve the major transactions and events of the Association for the period under examination.

### **Acquisitions, Mergers and Major Corporate Events**

There have been no acquisitions, mergers or major corporate events during the period under examination.

### **Surplus Debentures**

The Association does not have any surplus debentures issued or outstanding.

### **AFFILIATED COMPANIES**

The Association is not a member of a holding company system nor does it have any subsidiaries or affiliates.

### **FIDELITY BOND & OTHER INSURANCE**

The Association is covered by a \$200,000 crime (fidelity) policy. This coverage does not meet the amount suggested in the guidelines promulgated by the NAIC which is between \$350,000 and \$400,000 in coverage. It is recommended that the Association increase its current fidelity bond coverage to at least \$350,000.

The Company also carries a \$5,000,000 errors and omissions policy, a \$1,000,000 directors, officers and trustees policy and a \$1,000,000 fiduciary liability policy. The Association's coverage for these areas appears adequate.

## **EMPLOYEE BENEFITS**

MARCIT offers a range of benefits to its employees, including paid vacation, paid sick leave, paid holidays, funeral leave, military leave and emergency leave. The Association also offers the following insurance coverages: hospitalization, medical, dental, vision care, group life, short-term disability and long-term disability.

The Association has a non-contributory, defined contribution pension plan covering eligible employees. Eligibility and immediate vesting begins after one year of service. For each employee, MARCIT contributes \$500 (5% of the first \$10,000 in annual salary) plus 3.75% of remaining salary over \$10,000. The Company's pension expense for the years under examination, 2003 through 2005, were \$25,628, \$26,666 and \$60,017 respectively.

## **INSURANCE PRODUCTS AND RELATED PRACTICES**

### **Territory and Plan of Operations**

The Association is licensed by the Missouri Department of Insurance under RSMo Section 537.620 (Political subdivisions may jointly create entity to provide insurance). The Kansas Municipal Group Funded Pool Act permits Kansas municipalities in the five Kansas counties included in the Kansas City SMSA (Standard Metropolitan Statistical Area) to participate in health coverage provided by MARCIT. Membership of the Association includes cities, counties and other governmental entities located primarily in the Kansas City metropolitan area.

The Association provides coverage to its members under three separate pools for the listed types of coverage.

Property and Casualty Pool

General liability

Auto physical damage

Public official liability

EMT liability

Property insurance

Earthquake coverage

Auto liability

EDP insurance

Law enforcement liability

Inland marine insurance

Crime

Workers' Compensation Pool

Health and Dental Pool

Medical coverage: Indemnity and HMO plans

Dental coverage

Employee assistance program

At June 30, 2005, 32 members participated in the property and casualty pool, 29 members participated in the liability pool (a subset of the property and casualty pool), 36 members participated in the workers' compensation pool, and 58 members participated in the health and dental pool.

Based on a review of RSMo Section 537.620 and the associated Attorney General Opinion (#96-53), it appears MARCIT may not be legally able to operate in the State of Kansas. When MARCIT and MARCLIT were formed in 1983 and 1984, they operated under three separate statutes – RSMo Sections 287, 355, and 537. In 1988, Chapter 537 RSMo was amended to allow all types of insurance. MARCIT and MARCLIT subsequently merged in 1991 and consolidated all pools under RSMo Section 537.620. This merger changed the health and dental pool (which had included Kansas participants since the 1980's) from operating under the provisions of Chapter 355 RSMo to operating under the provisions of Chapter 537 RSMo. In 1996, the Missouri Attorney General issued Opinion #96-53 stating that non-Missouri political subdivisions could not participate in RSMo Section 537.620 pools. In 2000, this issue was addressed to MARCIT by MDI. However, no resolution was reached at that time and MARCIT has

continued to include Kansas entities in the pool. The Association is directed to terminate the participation of all Kansas members in the pools until this issue is settled with the Missouri Department of Insurance.

In addition to the Kansas members, the pools are also providing coverage to MARCIT and to the Mid-America Regional Council (MARC). Under RSMo Section 537.620, the pools should be open only to “political subdivisions” of the State of Missouri. Based on a review of the formation and governance of both MARCIT and MARC, neither appears to qualify as a political subdivision of the State of Missouri. Therefore, the Association is also directed to terminate the participation of MARCIT and MARC in all pools sponsored by the Association.

### **Service Providers**

MARCIT contracts with various service providers for underwriting, claims processing, claims payment, accounting and other services.

### **American Sterling Insurance Services**

American Sterling Insurance Services (ASIS) processes and pays health claims for the traditional indemnity plans. They also provide assistance with rate calculations and benefit plan design changes, process employee enrollment forms and prepare monthly premium bills.

### **Preferred Provider Organizations**

MARCIT contracts with Preferred Health Professionals for access to the Freedom Network Select and HealthLink preferred provider organizations. These provider organizations provide network discounts to employees and their families covered by MARCIT’s indemnity plans.

### Humana

MARCIT provides a closed panel health maintenance organization (HMO) plan sponsored by Humana, Inc. Under this plan, employees use doctors and hospitals offered by the Humana plan and expenses are billed to MARCIT. The enrollment information is shared with ASIS, which prepares and mails monthly member premium bills.

### Delta Dental Plan

Delta Dental Plan provides dental benefits under the MARCIT plan. Delta Dental Plan processes employee enrollment forms and prepares monthly insurance premium billings. Delta Dental Plan also processes and pays dental claims.

### Thomas McGee, L.C.

Thomas McGee, L.C. provides underwriting and claims administration for the property and casualty and workers' compensation pools. They also assist in reviewing the self-insured coverage and insuring agreements. Thomas McGee, L.C. continuously monitors the insurance market for the purchased property insurance coverage.

### Mid-America Regional Council

The Mid-America Regional Council (MARC) provides support including supplies, telephone, postage, copying, and switchboard services. MARC also provides accounting services, prepares monthly financial statements, and assists with the annual audit and budget preparation. MARC, an association of local governmental entities in the Kansas City metropolitan area, is a charter member of MARCIT.

### **Policy Forms and Underwriting**

Members sign a Membership Agreement upon entering the MARCIT pool. This Agreement documents the responsibilities of the Association and its members.

### **Advertising and Sales Material**

The Association does a minimal amount of advertising in various newsletters and journals. A cursory review of the advertising did not indicate any misrepresentations.

### **Treatment of Policyholders**

RSMo Section 537 does not require the Association to maintain a complaint log. However, complaints are handled through procedures established by ASIS (health) and Thomas McGee, L.C. (property and casualty and workers' compensation), these procedures appear to meet minimum standards for processing complaints.

## **REINSURANCE**

### **Assumed**

The Association does not assume any reinsurance from other companies.

### **Ceded**

The Association secures excess coverage for each of its three insurance pools:

#### **Property and Casualty Pool**

Property excess coverage is provided through the Public Entity Property Insurance Program (PEPIP). This program spreads the risk among various reinsurance companies, with risks at each level split among one or more of the reinsurers. The excess coverage policy provides for coverage up to \$500 million, and has various deductibles and policy limits based on specific property coverages.

Casualty excess coverage is placed with General Reinsurance Corporation and with Government Entities Mutual. The casualty excess coverage agreements provide



both specific and aggregate coverage with the Association's specific retention being \$500,000 and its aggregate retention being \$15,000,000.

#### Workers' Compensation Pool

Workers' Compensation is covered by an excess treaty with Safety National Casualty Corp. (SNCC). MARCIT retains \$450,000 on a specific loss basis and SNCC provides coverage up to the statutory limit. On an aggregate basis, SNCC provides up to \$1,000,000 after the Company reaches an attachment point of \$9,663,281.

#### Health and Dental Pool

MARCIT has an excess policy with Transamerica Life Insurance Company covering the Health portion of the pool. Under this policy, MARCIT retains \$250,000 on a specific basis with Transamerica providing up to \$2,000,000 on a specific basis. The Association does not purchase any reinsurance for the dental portion of the pool.

### **ACCOUNTS AND RECORDS**

MARCIT is audited annually by a certified public accounting firm. The Association's auditor for fiscal year-end June 30, 2003 was PricewaterhouseCoopers, LLP. For fiscal year-ends June 30, 2004 and 2005 the auditor was Conner Ash P.C.

The Association's Workers' Compensation Fund and Property and Casualty Pool loss reserves at June 30, 2005 were reviewed by Timothy P. Quinn, FCAS, MAAA, ARM of Tillinghast-Towers Perrin.

### **FINANCIAL STATEMENTS**

The following financial statements, with supporting exhibits, present the financial condition of the Association as of June 30, 2005, and the results of operations for the year

then ended. Any examination adjustments to the amounts reported in the financial statements or comments regarding such are made in the “Notes to the Financial Statements,” which follow the financial statements.

There may have been additional differences found in the course of this examination, which are not shown in the “Notes to the Financial Statements.” These differences were determined to be immaterial in relation to the financial statements, and therefore were only communicated to the Association and noted in the workpapers for each individual annual statement item.

### ASSETS

Cash and Cash Equivalents	\$13,074,692
Investments	22,877,114
Accrued Interest	24,475
Premiums due from Members	167,207
Excess Insurance Recover on Paid Losses	90,531
Deductible Receivable	323,108
Other Receivables	108,142
Prepaid Insurance and Other Expenses	7,050
Government Entities Mutual Membership Deposit	500,000
Excess Insurance Recoverable on Unpaid Losses	2,681,000
Property, and Equipment	66,718
Total Assets	<u>\$39,920,037</u>

## **LIABILITIES AND FUND EQUITY**

### **LIABILITIES**

Claim Reserves	\$3,812,904
ULAE Reserves	71,600
Accounts Payable	511,370
Unearned Premiums	4,700,379
Noncurrent Claim Reserves	9,494,654
Total Liabilities	<u>18,590,907</u>

### **FUND EQUITY**

Invested in Capital Assets	66,718
Unrestricted	21,262,412
Total Fund Equity	<u>21,329,130</u>

Total Liabilities and Fund Equity	<u><u>\$39,920,037</u></u>
-----------------------------------	----------------------------

## **STATEMENT OF REVENUES AND EXPENSES**

### **REVENUES**

Premiums Earned	\$27,512,551
Interest Income	729,103
Change in Fair Value of Investments	384,111
Total Revenues	<u>28,625,765</u>

### **EXPENSES**

Losses and LAE Paid	18,921,557
Change in Loss and LAE Reserves	1,969,176
Excess Insurance Premiums	1,214,755
Other Insurance Premiums	445,031
Premium Taxes	229,320
Claims administration Fees	1,345,659
Loss Prevention	436,674
General and Administrative	2,017,248
Depreciation	33,752
Total Expenses	<u>26,613,172</u>

<b>INCREASE IN FUND EQUITY</b>	<u><u>\$2,012,593</u></u>
--------------------------------	---------------------------

## **FUND EQUITY ACCOUNT**

Fund Equity at June 30, 2004	\$19,316,537
Increase in Fund Equity	2,012,593
Fund Equity at June 30, 2005	<u>\$21,329,130</u>

## **NOTES TO FINANCIAL STATEMENTS**

None

## **EXAMINATION CHANGES**

None

## **GENERAL COMMENTS AND RECOMMENDATIONS**

Conflict of Interest Page 7

It is recommended that the Association require all officers and employees to complete conflict of interest statements on an annual basis.

Bylaws Page 7

It is recommended that the Association begin following all the provisions it has incorporated into its Bylaws regarding meeting dates and director participation.

Fidelity Bond Page 8

It is recommended that the Association increase its current fidelity bond coverage to at least the NAIC's suggested minimum amount of \$350,000.

Territory of Operation Page 9

1. The Association is directed to terminate the participation of all Kansas members in the pools until this issue is settled with the Missouri Department of Insurance.
2. The Association is also directed to terminate the participation of MARCIT and MARC in all pools sponsored by the Association.

## **SUBSEQUENT EVENTS**

Subsequent to the completion of field work, the Missouri legislature passed House Bill #1703. The proposed effective date for this bill is August 28, 2006. It repeals Sections 537.620 and 537.640, RSMo, and enacts two new sections (also 537.620 and 537.640) relating to insurance pooling.

The new language to Section 537.620 RSMo will allow non-Missouri political subdivisions and quasi-public governmental bodies to join/form a business entity formed for the purpose of providing liability and all other insurance.

Based on this statutory change, the “General Comments and Recommendations” related to “Territory of Operation” (page 17) is rescinded in its entirety. Under new statute, Kansas political subdivisions as well as MARCIT and MARC can participate in the various insurance pools offered by MARCIT.

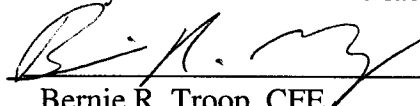
## ACKNOWLEDGMENT

The assistance and cooperation extended by the officers and employees of MARCIT during the course of this examination is hereby acknowledged and appreciated. In addition to the undersigned, Chris Buchanon, CFE, examiner for the Kansas Department of Insurance, also participated in this examination.

## VERIFICATION

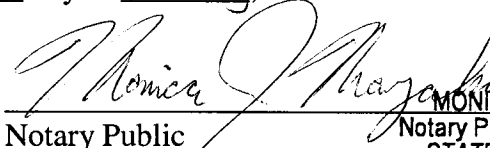
State of Missouri                     )  
  )  
County of Jackson                 )

I, Bernie R. Troop, on my oath swear that to the best of my knowledge and belief the above examination report is true and accurate and is comprised of only facts appearing upon the books, records or other documents of the Association, its agents or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs and such conclusions and recommendations as the examiner finds reasonably warranted from the facts.

  
Bernie R. Troop, CFE  
Examiner-In-Charge  
Missouri Department of Insurance

Sworn to and subscribed before me this 8 day of February, 2006.  
My commission expires:

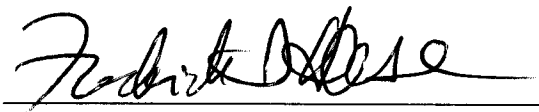
March 10, 2009

  
Notary Public  
MONICA J. MAYAKA  
Notary Public - Notary Seal  
STATE OF MISSOURI  
County of Jackson

## SUPERVISION

My Commission Expires 3/10/2009  
Commission # 05679768

The examination process has been monitored and supervised by the undersigned. The examination report and supporting workpapers have been reviewed and approved. Compliance with NAIC procedures and guidelines as contained in the Financial Condition Examiners Handbook has been confirmed.

  
Frederick G. Heese, CFE, CPA  
Audit Manager  
Missouri Department of Insurance

**KUTAK ROCK LLP**  
SUITE 500  
1010 GRAND BOULEVARD  
KANSAS CITY, MISSOURI 64106-2220

816-960-0090  
FACSIMILE 816-960-0041

[www.kutakrock.com](http://www.kutakrock.com)

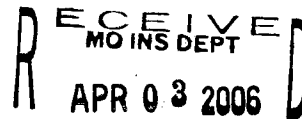
ATLANTA  
CHICAGO  
DENVER  
DES MOINES  
FAYETTEVILLE  
IRVINE  
LITTLE ROCK  
LOS ANGELES  
OKLAHOMA CITY  
OMAHA  
PASADENA  
RICHMOND  
SCOTTSDALE  
WASHINGTON  
WICHITA

J. DOUGLAS IRMEN  
doug.irmen@kutakrock.com  
(816) 960-0090

March 31, 2006

**Via Certified Mail**  
**Return Receipt Requested and**  
**Email: <http://insurance.mo.gov>**

Mr. Kirk Schmidt, CFE, CPA  
Chief Financial Examiner  
Department of Insurance  
State of Missouri  
P.O. Box 690  
301 W. High  
Truman State Office Building – Room 530  
Jefferson City, MO 65102-0690



RE: Report of Financial Examination of MARCIT as of June 30, 2005

Dear Mr. Schmidt:

We serve as general counsel to MARCIT. This letter constitutes the response of MARCIT to your letter of March 2, 2006 which was received in MARCIT's offices on March 6, 2006. MARCIT does not object to the inclusion of this response as a public document in your Examination Report ("Report").

For ease of reference, we will respond to the "General Comments and Recommendations" contained on page 17 of your Report in the order in which they appear.

1. Conflict of Interest. MARCIT will require all of its officers and employees to complete Conflict of Interest Statements on an annual basis.
2. Bylaws. MARCIT will follow all provisions of its Bylaws, including provisions pertaining to meeting dates and director participation. It is possible that MARCIT will rewrite its Bylaws during the calendar year 2006, and if such a revision of MARCIT's Bylaws occurs, MARCIT will follow all provisions of its new Bylaws.
3. Fidelity Bond. MARCIT will increase its current fidelity bond coverage to at least \$350,000.

**KUTAK ROCK LLP**

Mr. Kirk Schmidt, CFE, CPA

March 31, 2006

Page 2 of 7

4. Territory of Operation.

(1) Kansas Members Issue.

The Mid-America Regional Council ("MARC") serves as an association of city and county governments and as a metropolitan planning organization. MARC coordinates planning and operations of political subdivisions in the bistate Kansas City region. MARCIT, formerly Mid-America Regional Council Insurance Trust, was created on July 1, 1983, by eleven of the members of MARC to establish a workers' compensation insurance pool among themselves. One year later, MARCIT added health and dental coverage. In January, 1985 the pool introduced liability and property coverages through an entity named MARCLIT.

As part of the merger of MARCIT and MARCLIT described on page 4 of your Report, in May of 1991 MARCIT transferred its assets and liabilities into MARCLIT and MARCIT dissolved. MARCLIT then changed its name to MARCIT. Prior to this transfer, in January of 1990, MARCIT advised Mark Stahlhuth, attorney for the Missouri Department of Insurance, that certain Kansas municipalities in the metropolitan Kansas City area were members of MARCIT (for health and dental coverages) and that MARCIT would desire for them to remain so under the new merged entity. MARCIT also advised that meetings were taking place with appropriate persons at the Kansas Insurance Department to clarify Kansas law that such Kansas municipalities could participate in MARCIT's health and dental pool.

In May of 1991, MARCIT forwarded merger documents to Mr. Stahlhuth and informed him that a Certificate of Good Standing would be requested for the surviving corporation in order to obtain authorization for that corporation to do business in Kansas as a group-funded pool.

Not long thereafter, Kansas passed legislation which authorized political subdivisions from the five Kansas counties in the greater Kansas City metropolitan area to join MARCIT for health and dental coverage. This legislation permitted Kansas to examine the affairs of MARCIT, and also provided that if there were a conflict between Kansas and Missouri law, the stricter law would apply.

From 1990 to 2000, MARCIT operated this group-funded pool, as described to Mr. Stahlhuth, with members from both Missouri and Kansas political subdivisions. During this period, the Missouri Department of Insurance conducted an audit every 2 years and sent representatives regularly to MARCIT annual meetings. Through these audits and meetings, the Department of Insurance was fully aware that MARCIT included Kansas members.

In April of 2000, Mr. Stahlhuth sent a letter to MARCIT stating that he "heard information" that MARCIT was insuring Kansas political subdivisions and demanding that MARCIT be limited to insuring risks of political subdivisions of Missouri only. Counsel for MARCIT then spoke with Mr. Stahlhuth and explained that MARCIT had included Kansas members since 1990 and reminded Mr. Stahlhuth that MARCIT had previously informed him of



**KUTAK ROCK LLP**

Mr. Kirk Schmidt, CFE, CPA

March 31, 2006

Page 3 of 7

the arrangement. Counsel for MARCIT then sent a letter to Mr. Stahlhuth confirming the substance of the meeting, and providing additional copies of prior correspondence to the Department which advised of the participation of Kansas members. Mr. Stahlhuth did not thereafter respond.

Accordingly, for the period since at least 1990 through Mr. Stahlhuth's April 2000 letter, and thereafter until late 2005 when the Department commenced the current examination, MARCIT has successfully operated its health and dental pool with the participation of certain Kansas political subdivisions and with the knowledge of the Missouri Department of Insurance. During this entire time period, MARCIT had valid reason to believe that the Department had been fully aware of Kansas member participation and, except for the April 2000 letter which was not followed up in any way, MARCIT had valid reason to believe that the Department had no objection to the participation of Kansas members.

It is the position of MARCIT that, under Missouri law, MARCIT should be permitted to accept Kansas members. Missouri law does not prohibit such membership, and in fact Missouri law specifically authorizes non-Missouri political subdivisions to join MARCIT.

It is important to understand the statutory background permitting the formation of MARCIT. The statutory framework is provided by R.S.Mo. Chapters 70.220 and 537.620.

Chapter 70.220 reads in pertinent part as follows:

Any municipality or political subdivision of this state, as herein defined, may contract and cooperate with any other municipality or political subdivision, or with an elective or appointive official thereof, or with a duly authorized agency of the United States, or of this state, ***or with other states or their municipalities or political subdivisions***, or with any private person, firm, association or corporation, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service; provided, that the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision.  
**(emphasis added)**

The Missouri Supreme Court has described Chapter 70.220 as an authorization for political subdivisions to enter into cooperative agreements. *See Cape Motor Lodge, Inc., v. City of Cape Girardeau*, 706 S.W.2d 208, 212 (Mo. 1986) (en banc). The statute expressly permits municipalities or political subdivisions to contract with one another, including political subdivisions of other states. Providing a common service is a permitted purpose for such a contract. The Missouri Supreme Court has stated that under Chapter 70.220 "the pooling of

**KUTAK ROCK LLP**

Mr. Kirk Schmidt, CFE, CPA

March 31, 2006

Page 4 of 7

resources not only promotes cooperation among governmental agencies, it permits cost saving . . .” *Roberts v. City of Maryville*, 750 S.W.2d 69, 72 (Mo. 1988) (en banc).

Chapter 70.210 defines a “political subdivision” as a county, township, city, town, village, school, county library, city library, city-county library, road, drainage, sewer, levee and fire districts, soil and water conservation districts, watershed subdistricts, county hospitals, and any board of control of an art museum, and any other public subdivision or public corporation having the power to tax.

Chapter 537.620 provides an additional and specific authorization by which cooperating political subdivisions are granted the power to establish an entity, in the form of a not-for-profit corporation, to provide insurance-type coverage to members of such entity. The statute reads as follows:

Notwithstanding any direct or implied prohibitions in chapter 375, RSMo, 377, RSMo, or 379, RSMo, any three or more political subdivisions of this state may form a business entity for the purpose of providing liability and all other insurance . . . for any of the subdivisions upon the assessment plan as provided in sections 537.600 to 537.650. *Any political subdivision* may join this entity and use public funds to pay any necessary assessment. **(emphasis added).**

As mandated by this statute, only Missouri political subdivisions may initially form the pooling entity. However, the statute clearly provides that “any political subdivision” may join after the entity is created. The legislature specifically differentiated between those political subdivisions that may form a pooling entity and those political subdivisions that may thereafter participate in the pooling entity. The language “any political subdivision” without the constraining words “of this state” could not more clearly reflect legislative permission for political subdivisions from outside Missouri to join after the entity has been created. If the Missouri legislature had intended to exclude non-Missouri political subdivisions from joining an established pooling entity, it could have easily added the same phrase “of this state” that it had included in the prior sentence of the statute. Accordingly, because Chapter 537.620 provides that “any political subdivision” may join a pooling entity, and because MARCIT is a pooling entity formed under that statute, Kansas political subdivisions may join MARCIT.

It appears that the only opposition to this position is an Attorney General Opinion issued by Jay Nixon in February, 1996. The opinion addressed whether Missouri Housing Authorities Property & Casualty Insurance, Inc. (“MHAPCII”), a pool formed by Missouri housing authorities under Chapter 537.620 to provide insurance to the authorities (similar to MARCIT providing insurance to its members), could include other states’ housing authorities. The Attorney General opined that MHAPCII “may not contract to assume risks of other than Missouri political subdivisions which are members.” Mo. Op. Att’y Gen. No. 53-96 (February 14, 1996).

In considering Attorney General Opinion 53-96, account must be given to the rule of statutory construction that statutes addressing the same subject should be considered together and harmonized as much as possible so as to give meaning to each provision. *See Reeves v. Bockman*, 101 S.W.3d 280, 282 (Mo.App. 2002) quoting *State ex rel. Lebeau v. Kelly*, 697 S.W.2d 312, 315 (Mo.App. 1985). In considering this rule, it is clear that Chapter 70.220 expressly empowers Missouri political subdivisions to contract with non-Missouri political subdivisions for the purpose of providing a common service. Although Missouri courts have not addressed the question, it is obvious that cooperative action in providing insurance to political subdivisions and their employees should be considered a “common service.” Therefore, when reading Chapter 70.220 together with Chapter 537.620, it is clear that the legislature intended for Chapter 537.620 to specifically enable Missouri political subdivisions to establish a separate legal entity as the means by which they could provide a common service (insurance coverages) through a pooling entity which is open to participation by political subdivisions of Missouri or any other state. Further, there is a complete absence of any statutory provisions in Missouri law which prohibit pooling entities from including members from outside Missouri.

Although the Attorney General opinion cited both Chapters 70.220 and 537.620, it in fact ignored the language in Chapter 70.220 that allows Missouri political subdivisions to contract with “other states or their municipalities or political subdivisions.” The opinion merely concludes that the “any political subdivision” language of 537.620 “is a reference to political subdivisions of Missouri. Otherwise, the legislature would not have needed to authorize those political subdivisions to ‘use public funds.’ Thus, only political subdivisions of Missouri may become members of the association.” Mo. Op. Att’y Gen. No. 53-96 (February 14, 1996). The Attorney General cites no statutory or case law authority for his “use public funds” argument, nor can any support be found. The “use public funds” language of 537.620 could just as easily be interpreted to direct that public, not private funds be used to conduct pool business since 537.620 clearly carves out a narrow exemption from regular insurance laws solely for governmental, and not private entities. Moreover, the Attorney General’s opinion is not binding on Missouri courts, and a court is free to find it unpersuasive. *See Smith v. Sheriff*, 982 S.W.2d 775, 779 (Mo.App. 1998). In fact, “opinions issued by the Attorney General . . . are entitled to no more weight than that given the opinion of any other competent attorney.” *Gershman Investment Corp. v. Danforth*, 517 S.W.3d 33, 36 (Mo. 1974) (en banc).

In addition, the Department could potentially be barred from prohibiting MARCIT from accepting non-Missouri members based on the doctrine of laches. In general, laches is an equitable doctrine designed to bar stale claims. The doctrine of laches can be invoked by a party who has been prejudiced by an adverse party’s unreasonable and unjustified delay in asserting a purported right. *See Lane v. Non-Teacher School Employee Retirement System of Missouri*, 174 S.W.3d 626, 639 (Mo.App. 2005) *Hart v. Kupper Parker Communications, Inc.*, 114 S.W.3d 342, 350 (Mo.App. 2003). In this instance, if the Department believed that the law prohibits MARCIT from accepting non-Missouri members, the Department should have acted to prevent such membership years ago. The Department has known for at least sixteen years that MARCIT permitted membership of Kansas political subdivisions and has done nothing to prevent it. The

**KUTAK ROCK LLP**

Mr. Kirk Schmidt, CFE, CPA

March 31, 2006

Page 6 of 7

Department's failure to act for sixteen years and then its abrupt reversal in 2005 would operate to prejudice MARCIT because MARCIT has continued to accept members from Kansas. To now cause Kansas members to abruptly terminate their participation in MARCIT would substantially and detrimentally affect the financial status of MARCIT and strip the Kansas members and their employees of the insurance upon which they rely.

(2) MARC/MARCIT Participation.

The Report concludes that neither MARC nor MARCIT are political subdivisions and therefore should not be entitled to participate in MARCIT. This is an unfortunate position which places form over substance.

Neither MARC nor MARCIT would exist without the express statutory approval of the Missouri legislature which authorized political subdivisions to create these very entities. These entities exist solely to serve a public purpose. They are not owned by or affiliated in any way with any private interests. Their members are political subdivisions, their board members are representatives directly from those political subdivisions, and they operate solely to fulfill the various missions of governmental entities. As stated in the *Roberts* case cited above, "the pooling of resources not only promotes cooperation among governmental entities, it permits cost saving. . ." *Roberts* 750 S.W.2d at 72. Furthermore, in order to provide the common services and save costs as permitted under Chapters 70.220 and 537.620, both entities require the hiring of employees to carry out their respective functions. Although on a technical basis these employees are not directly employed by political subdivisions, their ultimate employers and intended beneficiaries are the political subdivision members of MARC and MARCIT.

Finally, it would be unfair to MARC and MARCIT, and an arbitrary application of only certain applicable statutes, as opposed to all such applicable statutes, to take the position that MARC and MARCIT are somehow private entities. Both MARC and MARCIT are subject to the Missouri Sunshine Law, Chapter 610.010 et seq. Under this law, both MARC and MARCIT are subject to the Sunshine Law's open records and open meetings requirements because they both constitute a "quasi-governmental body" in that they have as their "primary purpose to enter into contracts with public governmental bodies, or to engage primarily in activities carried out pursuant to an agreement or agreement with public governmental bodies. . . ." Chapter 610.010(4)(f). If the Missouri legislature has defined the functions of MARC and MARCIT in a way which determines that they are public and therefore subject to the scrutiny of open records laws as reflected in the Missouri Sunshine Law, then surely that determination cannot be disregarded in the relatively minor question of whether employees of these two entities can participate in the coverages of MARCIT.

It also should be noted that, because MARCIT is subject to the Missouri Sunshine Law, it is at a competitive disadvantage with privately owned insurance entities whose information, strategic plans, and other data are not open to inspection by the public and competitors. Certainly it is only fair to enable the employees of MARC and MARCIT to take advantage of the

**KUTAK ROCK LLP**

Mr. Kirk Schmidt, CFE, CPA

March 31, 2006

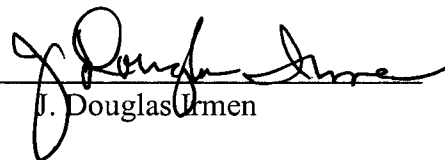
Page 7 of 7

benefits provided by MARCIT given the burden which the Missouri Sunshine Law imposes upon the competitive position of MARCIT.

As Mr. Finke and Mr. Ommen of your Department are aware, legislation has been introduced in the Missouri legislature which would specifically address and resolve whatever ambiguity may exist in current Chapter 537.620. A copy of House Bill 1703 is attached. If your Department does not accept MARCIT's position as set forth above, MARCIT respectfully requests that the Department defer taking any action with respect to the Kansas issue and the MARC/MARCIT issue until such time as the current legislative session has ended and the Governor has acted. MARCIT suggests this alternative in a good faith effort to resolve the Kansas and the MARC/MARCIT issues in the most cooperative way possible.

Very truly yours

Kutak Rock LLP

By:   
J. Douglas Ommen